UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

- - - - - - - - - - - - - -

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATHAN ALFRED JOYAL,

Defendant.

______________________________/

No. 2:14-cr-27

Hon. R. Allan Edgar
U.S. District Judge

PLEA AGREEMENT

This constitutes the plea agreement between Nathan Alfred Joyal and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. Defendant Agrees to Plead Guilty. Defendant agrees to plead guilty to Counts 1 and 12 of the Indictment. Count 1 charges Defendant with conspiracy to manufacture, distribute and possess with intent to distribute 50 kilograms of marijuana and 50 or more marijuana plants, a Schedule I controlled substance, in violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(C). Count 12 charges Defendant with possession of an unregistered short-barreled rifle, in violation of 26 U.S.C. § 5861(d).

2. Defendant Understands the Crimes. In order for Defendant to be guilty of violating 21 U.S.C. §§ 846 and 841(a)(1) and 841(b)(1)(C), the following must

be true: first, that two or more persons conspired or agreed to manufacture, distribute or possess with intent to distribute marijuana; second, that Defendant knowingly and voluntarily joined the conspiracy; and, third, that the conspiracy as a whole involved 50 kilograms of marijuana or 50 or more marijuana plants. (*Sixth Circuit Criminal Pattern Jury Instructions*, Instructions 14.05 and 14.07B (June 19, 2014).) In addition, on order for Defendant to be guilty of violating 26 U.S.C. § 5861(d), the following must be true: first, Defendant knowingly possessed a rifle; second, the barrel of such rifle was less than 16 inches in length; third, Defendant was aware that the barrel of such rifle was less than 16 inches in length; and, fourth, such rifle was not registered in the National Firearms Registration and Transfer Record.

Defendant is pleading guilty because Defendant is guilty of the charges described above.

3. Defendant Understands the Penalties. The statutory maximum sentence that the Court can impose for a violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(C) is the following: 20 years' imprisonment; a term of supervised release of life; a fine of $1,000,000, or twice the gross gain or gross loss resulting from the offense, whichever is greater; and a mandatory special assessment of $100. In addition, Defendant understands that the Court must impose a minimum term of supervised release of 3 years for this conviction.

The statutory maximum sentence that the Court can impose for a violation of 26 U.S.C. § 5861(d) is the following: 10 years' imprisonment; a 3-year period of supervised release; a fine of $250,000; and a mandatory special assessment of $100.

Defendant agrees to pay the special assessments at or before the time of sentencing unless Defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

4. Factual Basis of Guilt. Defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts which need not be proven at the time of the plea or sentencing:

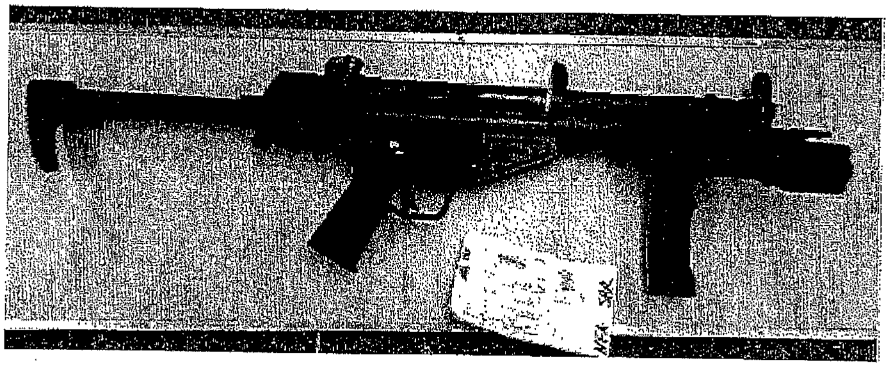
Defendant was the owner of Northern Specialties Health, which sold marijuana in Houghton County, Michigan from April 2011 through December 12, 2013. During that time, he conspired with employees of his store and other to manufacture, distribute and possess with intent to distribute 50 or more kilograms of marijuana and 50 or more marijuana plants. Marijuana and marijuana plants are Schedule I controlled substances.

The gross proceeds of this conspiracy were approximately $750,000.

In furtherance of this conspiracy, Defendant and/or his employees sold marijuana to an undercover law enforcement officer on the following dates: July 10, 2013; July 17, 2013; September 5, 2013; September 26, 2013; October 24, 2013 and November 20, 2013.

In furtherance of this conspiracy, on December 12, 2013, Defendant knowingly possessed marijuana and 50 or more marijuana plants that he intended to distribute. In addition, on that day, Defendant was in the process of manufacturing 50 or more marijuana plants.

Furthermore, on December 12, 2013, Defendant knowingly possessed a PTR 91, Inc., model PTR-91, .308 caliber rifle bearing serial number DK0716. This weapon had been modified with the addition of a collapsible shoulder stock. As a result of this modification, this weapon qualifies as a "rifle" as defined in 26 U.S.C. § 5845(c). A photograph of this rifle is attached below.



This rifle has a barrel that is 9-3/4 inches in length. Defendant was aware that the barrel on this rifle was less than 16 inches in length.

26 U.S.C. § 5845(a) lists weapons that qualify as "firearms" due to some characteristic of the weapon. Pursuant to 26 U.S.C. 5841, all such firearms in the United States that are not in the possession of the United States must be registered in the National Firearms Registration and Transfer Record.

The PTR 91, Inc., model PTR-91, .308 caliber rifle in this case qualifies as a "firearm" because it has a barrel that is less than 16 inches in length. This firearm was not registered in the National Firearms Registration and Transfer Record.

5. Asset Forfeiture and Financial Accountability. Defendant consents to the entry of a money judgment against Defendant in an amount to be determined by the Court, which Defendant agrees represents a portion of the gross proceeds obtained from his violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C), which is forfeitable pursuant to 21 U.S.C. § 853(a)(1). In addition, Defendant agrees to forfeit all rights, title and interest in the $1,916 United States currency and tools, equipment, materials, and chemicals, and drug paraphernalia listed in the forfeiture allegation of the Indictment and the Bill of Particulars and its attachments filed by the government on July 24, 2014. Defendant admits that the $1,916 United States Currency represents proceeds from his violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(C), and is forfeitable pursuant to 21 U.S.C. § 853(a)(1). Defendant admits that the tools, equipment, materials, and chemicals and drug paraphernalia facilitated his violation of 21 U.S.C. §§ 846, 841(a)(1) and 841(b)(1)(C), and is forfeitable pursuant to 21 U.S.C. § 853(a)(2). Finally, Defendant agrees to forfeit all rights, title and interest in the substitute assets listed in Exhibit A to the Indictment and Attachment A to the Bill of Particulars filed by the government on July 24, 2014.

6. The United States Attorney's Office Agrees.

a. Dismissal of Other Counts. The U.S. Attorney's Office agrees to move to dismiss the remaining counts of the Indictment against Defendant at the time of sentencing. Defendant agrees, however, that in determining the sentence the Court may consider the dismissed counts in determining the applicable Sentencing Guidelines range, where the sentence should fall within the applicable guidelines range, and the propriety of any departure from the calculated guidelines range. By this agreement Defendant does not concede that an increased sentence or an upward departure is, in fact, warranted.

b. Acceptance of Responsibility. The U.S. Attorney's Office agrees not to oppose Defendant's request for a two-level reduction of his offense level for acceptance of responsibility under § 3E1.1(a) of the Sentencing Guidelines. However, the U.S. Attorney's Office reserves the right to object to Defendant's request if it subsequently learns of conduct by Defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. Should the Court grant a two-level reduction as provided herein, the Government states that Defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying it of his intention to enter a guilty plea, thereby permitting the Government to avoid preparing for trial, and hereby moves the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater.

7. The Sentencing Guidelines. Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing Defendant. Defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. Defendant

understands that Defendant and Defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. Defendant further understands that the Court shall make the final determination of the Guideline range that applies in this case, and may impose a sentence within, above, or below the Guideline range, subject to the statutory maximum penalties described elsewhere in this Agreement. Defendant further understands that disagreement with the Guideline range or sentence shall not constitute a basis for withdrawal of the plea.

8. There is No Agreement About the Final Sentencing Guidelines Range. Defendant and the U.S. Attorney's Office have no agreement as to the applicable Sentencing Guidelines factors or the appropriate guideline range. Both parties reserve the right to seek any sentence within the statutory maximum, and to argue for any criminal history category and score, offense level, specific offense characteristics, adjustments and departures.

9. Waiver of Trial Rights. By pleading guilty, Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of Defendant's guilty pleas, there will be no trial. At any trial, whether by jury or by the Court, Defendant would have had the following rights:

a. The right to the assistance of counsel, including, if Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent Defendant.

b. The right to be presumed innocent and to have the burden of proof placed on the Government to prove Defendant guilty beyond a reasonable doubt.

c. The right to confront and cross-examine witnesses against Defendant.

d. The right, if Defendant wished, to testify on Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

e. The right not to be compelled to testify, and, if Defendant chose not to testify or present evidence, to have that choice not be used against Defendant.

f. By pleading guilty, Defendant also gives up any and all rights to pursue in this Court or on appeal any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

10. Waiver of Other Rights.

a. Waiver of Appeal. Defendant understands that the law affords Defendant the right to appeal the sentence imposed. Acknowledging this, Defendant knowingly waives the right to appeal any sentence that is at or below the maximum guideline range as determined by the Court before any upward departure or variance, and the manner in which the sentence was determined on the grounds set forth in 18 U.S.C. § 3742. Defendant also retains the right to appeal those objections preserved at sentencing that the Court incorrectly determined the final Guideline range. In addition, Defendant retains the right to appeal a sentence that exceeds the statutory maximum or is based upon an unconstitutional factor, such as race, religion, national origin or gender. Defendant acknowledges that this waiver is in exchange for the substantial concessions made by the United States Attorney's Office in this plea agreement. This agreement does not affect in any way the right of the United States Attorney's Office to appeal the sentence imposed by the Court.

b. FOIA Requests. Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

11. The Court is not a Party to this Agreement. Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum

established by statute, Defendant cannot, for that reason, withdraw his guilty pleas, and he will remain bound to fulfill all his obligations under this agreement. Defendant understands that no one – not the prosecutor, Defendant's attorney, or the Court – can make a binding prediction or promise regarding the sentence Defendant will receive, except that it will be within the statutory maximum.

12. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority. This agreement applies only to crimes committed by Defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.

13. Consequences of Breach. If Defendant breaches any provision of this agreement, including any promise of cooperation, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which Defendant would otherwise be entitled under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, Defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. Defendant further agrees to

waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

14. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements, understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

PATRICK A. MILES, JR.
United States Attorney

11/24/2014
Date

MAARTEN VERMAAT
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

11/24/2014
Date

NATHAN ALFRED JOYAL
Defendant

I am Mr. Joyal's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

11-24-14
Date

DEREK G. SWAJANEN
Attorney for Defendant